No. 94-1786

FILED
JUN 2 1995
OFFICE OF THE CLERK

IN THE

# Supreme Court of the United States

**October Term, 1994**

---

THE PEOPLE OF THE STATE OF NEW YORK,

*Petitioner,*

*against*

CARMEN REYES,

*Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

## PETITIONER'S REPLY TO THE BRIEF IN OPPOSITION

ROBERT T. JOHNSON
*District Attorney, Bronx County*
*Attorney for Petitioner*
*Counsel of Record*
215 East 161st Street
Bronx, NY 10451
(718) 590-2000

PETER D. CODDINGTON
ROBERT L. MOORE
*Assistant District Attorneys*
*Of Counsel*

THE REPORTER CO., INC.- Walton, NY 13856 - 800-252-7181
Syracuse Office, University Building, Syracuse, NY 13202 - 315-426-1235
NYC Office - 30 Vesey St., New York, NY 10007 - 212-732-6978 - 800-800-4264
(7227 – 1995)
Printed on Recycled Paper

7pp

## QUESTION PRESENTED

Whether this Court may review the questions presented on the Petition for a Writ of Certiorari.

## Table of Contents

Question Presented ..... i

Table of Authorities ..... iii

Point The standard, adopted in *Michigan v. Long,* 463 U.S. 1032 (1983), for determining whether a state court decision rests upon an adequate and independent state ground, permits this Court to review the questions presented in the Petition for a Writ of Certiorari .... 1

Conclusion ..... 3

# TABLE OF AUTHORITIES

Page

CASES:

Arizona v. Evans, ___ U.S. ___, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995) ..... 2

Delaware v. Prouse, 440 U.S. 648 (1979) ..... 2

Michigan v. Long, 463 U.S. 1032 (1983) ..... 1, 2

Michigan v. Summers, 452 U.S. 692 (1981) ..... 2

Orr v. Orr, 440 U.S. 268 (1979) ..... 2

Sibron v. New York, 392 U.S. 40 (1968) ..... 2

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

No. 94-1786

THE PEOPLE OF THE STATE OF NEW YORK,
*Petitioner,*

*-against-*

Carmen Reyes,
*Respondent.*

**PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT**

**PETITIONER'S REPLY TO THE BRIEF IN OPPOSITION**

**POINT**

**The standard, adopted in *Michigan v. Long*, 463 U.S. 1032 (1983), for determining whether a state court decision rests upon an adequate and independent state ground, permits this Court to review the questions presented in the Petition for a Writ of Certiorari.**

Respondent contends that "[t]here is no federal question presented by the instant petition in that the decision below was based on New York State Law." (Respondent's brief in opposition, p. 9). This claim is in error, since its supporting argument focuses almost exclusively and inappositely on the decision at

*nisi prius*, avoids analysis of the decision of the state appellate court, and ignores the standard of review established by this Court in *Michigan v. Long*, 463 U.S. at 1040-1041, and recently affirmed in *Arizona v. Evans*, ___ U.S. ___, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995).

The opinion of the Supreme Court of the State of New York, Appellate Division, First Department, clearly rests on its erroneous interpretation of this Court's decision in *Michigan v. Summers*, 452 U.S. 692 (1981). The reference, in the opinion below, to *People v. Milaski*, 62 N.Y.2d 147 (1984), which cited *Sibron v. New York*, 392 U.S. 40 (1968) in its holding (at page 156) that an individual was impermissibly detained, in response to the safety prong of *Summers*, demonstrates that, at the least, the state appellate court felt "compelled by what it understood to be federal constitutional considerations to construe" respondent's continued detention during the conduct of the search. See, *Delaware v. Prouse*, 440 U.S. 648, 653 (1979), *cit. omitted.* The mere possibility, as Respondent suggests, that the same result might have been reached if state law was considered, does not create an independent ground. See, *Orr v. Orr*, 440 U.S. 268, 276-77 (1979).

Since an independent and adequate state ground for the decision is not clear from the face of the decision under review and there is not a plain statement by the state appellate court that federal law was "used only for the purpose of guidance," this Court's jurisdiction to entertain the issues presented by the petition is established. *Michigan v. Long, supra, Arizona v. Evans* ___U.S.___, 115 S.Ct. at 1190, ___L.Ed.2d at 43, *cit omitted.*

## CONCLUSION

**The Petition for a Writ of Certiorari should be granted.**

Respectfully submitted,

ROBERT T. JOHNSON,
District Attorney
Bronx County
Attorney for Petitioner

PETER D. CODDINGTON
ROBERT L. MOORE
Assistant District Attorneys
of Counsel

June 1995